

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE MANUEL L. REAL, U.S. DISTRICT JUDGE
PRESIDING

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. CR 05-1017-R
)
ALISON ANN HERUTH,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

WEDNESDAY, APRIL 19, 2006

CHANGE OF PLEA

DEBORAH K. GACKLE, CSR, RPR
United States Courthouse
312 North Spring Street, Room 402A
Los Angeles, California 90012
(213) 620-1149

APPEARANCES OF COUNSEL:

For the Plaintiff:

STEPHANIE YONEKURA
ACTING UNITED STATES ATTORNEY
BY: David Willingham
BY: Christine Ewell
ASSISTANT UNITED STATES ATTORNEYS
1400 United States Courthouse
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For the Defendant:

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1 **LOS ANGELES, CALIFORNIA; WEDNESDAY, APRIL 19, 2006;**

2 **2:15 P.M.**

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4
5 THE CLERK: Item 1, CR 05-1017(A), United States of
6 America versus Alison Ann Heruth.

7 Counsel appearances, please.

8 MR. WILLINGHAM: Good afternoon, Your Honor. David
9 Willingham and Christine Ewell on behalf of the United States.
10 Present in the courtroom are Hal Bertrand from the FBI and Walt
11 Finnigan from the IRS.

12 MR. NISHI: Tom Nishi on behalf on behalf of Alison
13 Ann Heruth, present in court.

14 THE COURT: Ms. Heruth, I understand you've entered a
15 plea agreement to plead guilty to count 32 of the first
16 superseding indictment.

17 Is that correct?

18 THE DEFENDANT: Yes.

19 THE COURT: You understand that this plea agreement
20 does not bind me in any way as to what sentence I can impose
21 upon you within the maximum penalty provided by law.

22 You understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: It does not bind me to any sentence I
25 would impose upon you in any respect and to accept or reject

1 any recommendations made on your behalf at the time of
2 sentence.

3 You understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Before taking your plea, we are going
6 place you under oath and ask you some questions.

7 This is an important proceeding in which I must make
8 a determination of the bases in fact for your plea and the
9 voluntariness of your plea.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: If you should make any false answers to
13 any of my questions, you can be prosecuted for perjury.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: If you are prosecuted and convicted of
17 perjury for any false or untruthful answers you give me to
18 these questions, you can be imprisoned for up to five years,
19 which could be in addition to any sentence you may receive upon
20 the disposition of the charges against you this afternoon.

21 Do you understand that?

22 THE DEFENDANT: (Nodding head up and down.)

23 THE COURT: Swear the defendant.

24 THE CLERK: Please raise your right hand.

25 (Defendant sworn.)

1 THE DEFENDANT: So help me God.

2 THE COURT: Before accepting your plea, I want to
3 advise you again personally that you have a constitutional
4 right to a speedy and public trial by jury; to see and hear the
5 evidence and cross-examine witnesses against you; to the
6 processes of this court to compel the attendance of witnesses
7 in your favor; and to the assistance of counsel at all stages
8 of the proceedings.

9 Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: You are not required to prove your
12 innocence, but it is the duty of the government to prove by
13 competent evidence your guilt beyond a reasonable doubt.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: At any trial of the matter, that you
17 could not be called as witness against yourself or compelled or
18 forced in any manner to incriminate yourself.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: By pleading guilty to this charge, you
22 are in fact waiving your right to trial in which 12 jurors
23 unanimously agree upon your guilt or innocence.

24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: By pleading guilty to this charge, you
2 are in fact waiving your right to appeal this matter.

3 You understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Just relax.

6 With each of those rights in mind, is it your desire
7 to waive those rights by your plea of guilty rather than to go
8 to trial in this matter?

9 THE DEFENDANT: (No audible response.)

10 THE COURT: I stated the constitutional rights to
11 which you are entitled.

12 Do you desire to waive those rights by your plea of
13 guilty rather than to go to trial in this matter?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you told your lawyer the whole story
16 concerning all those facts charged against you in this first
17 superseding indictment?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you told your lawyer all the facts
20 and circumstances which may surround any statement, confession,
21 or other evidence that has been obtained from you by anyone?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you been told of the nature of the
24 charges against you and any possible defenses you may have?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you been told of the maximum penalty
2 provided by law for the offense to which you now offer to plead
3 guilty?

4 THE DEFENDANT: Yes.

5 THE COURT: State the maximum penalty to her,
6 Counsel.

7 MR. WILLINGHAM: Yes, Your Honor.

8 The maximum sentence that the court can impose for a
9 violation of Title 18, United States Code, Section 4, is three
10 years imprisonment; a one-year period of supervised release; a
11 fine of \$250,000, or twice the gross gain or gross loss
12 resulting from the offense, and a mandatory special assessment
13 of \$100.

14 THE COURT: Is your plea of guilty entirely free and
15 voluntary?

16 THE DEFENDANT: Yes.

17 THE COURT: It's not free and voluntary?

18 THE DEFENDANT: I said yes.

19 THE COURT: It's charged in count 32 of the
20 indictment, Ms. Heruth, "The Grand jury repeats and realleges
21 paragraphs one through three and five through eight of this
22 first superseding indictment as if fully set forth herein.

23 Paragraph 2 provides, "To finance Steeple's
24 activities, defendant Medawar and others raised money from
25 investors through the sale of stock in Steeple.

1 Paragraph 5 provides that "Defendant Medawar carried
2 out the scheme, in essence, as follows: Defendant Medawar
3 solicited, and caused others to solicit, potential investors to
4 invest in Steeple.

5 "Defendant Medawar, and others working at the
6 direction of Defendant Medawar, made numerous material
7 misrepresentations to, and concealed material facts from
8 investors as described below, to convince investors to invest
9 in Steeple.

10 "Defendant Medawar prepared, and caused to be
11 prepared, written materials that were mailed or otherwise
12 distributed to investors, including private placement
13 memoranda, subscription agreements, news articles, press
14 releases and other promotional materials containing material
15 misrepresentations and omissions of material fact.

16 "Defendant Medawar caused investors to mail, wire
17 transfer and otherwise deliver funds to him for investment in
18 Steeple.

19 "Defendant Medawar deposited, and caused to be
20 deposited, investor funds in bank accounts that he controlled
21 at Bank of America, including: Steeple Distributions, Limited,
22 bank account No. X-10196; Steeple Distributions, Limited, bank
23 account No. X-10091; Steeple Distribution, Limited, bank
24 account No. X-06104; and Defendant Medawar bank account No.
25 X-01471.

1 "Defendant Medawar deposited, and caused to be
2 deposited, investor funds in bank accounts that he controlled
3 at Wells Fargo Bank, including: Steeple Distributions,
4 Limited, bank account No. XXX-XXX-6244; Steeple Distribution,
5 Limited, bank account No. XXX-XXX6996; and Defendant Medawar
6 bank account No. XXX-XXX1173.

7 "Defendant Medawar deposited, and caused to be
8 deposited, investor funds in bank accounts that he controlled
9 at First Federal Bank including: Steeple Entertainment bank
10 account No. 7505; and Defendant Medawar used investors' funds
11 for his own and other's personal purposes, rather than using
12 them for business purposes as had been" -- "as had been
13 represented and promised to investors.

14 "Defendant Medawar diverted, misused, and
15 misappropriated investor funds to pay for personal expenses of
16 himself and others, including, but not limited to, apartment
17 and home rentals, tuition, child care, clothing, food and
18 entertainment, and automobile leases.

19 "As a result of this scheme to defraud, Defendant
20 Medawar caused more than 70 investors to invest more than
21 \$5.5 million in Steeple by use of false and misleading
22 representations and promises and the concealment of material
23 facts.

24 Paragraph six: "In furtherance of the scheme to
25 defraud described above, Defendant Medawar knowingly made, and

1 caused to be made, the following material false and fraudulent
2 pretenses, representations, and promises: Steeple would
3 conduct an initial public offering in the near future when, in
4 truth and in fact, as Defendant Medawar well knew, Steeple was
5 never in a position to conduct an initial public offering and
6 never conducted any initial public offering.

7 "That Steeple was in the process of having its
8 financial statements audited in preparation for an initial
9 public offering when, in truth and in fact as Defendant Medawar
10 well knew, Steeple's financial statements were never audited.

11 "That Steeple hired an underwriter to take it public,
12 namely, UBS, Paine Webber, and/or Smith Barney, when, in truth
13 and in fact, as Defendant Medawar well knew, Steeple never
14 entered into any agreement with any underwriter to take Steeple
15 public.

16 "That Steeple had a valuation of over \$200 million
17 when, in truth and in fact, as Defendant Medawar well knew,
18 Steeple never had a value of \$200 million, and to the extent
19 Steeple was ever worth anything, it was worth a tiny fraction
20 of \$200 million.

21 "That investor funds would be used for business
22 operations, such as production of the 'DHS' television series,
23 when, in truth and in fact, as Defendant Medawar knew, the
24 investor funds would be diverted, misused and misappropriated
25 by Defendant Medawar for personal uses and the personal uses of

1 others at direction of Defendant Medawar.

2 "That Steeple had completed distribution deals for
3 'DHS,' the television series in 137 overseas markets, when, in
4 truth and in fact, as Defendant Medawar well knew, Steeple did
5 not have complete distribution deals with overseas markets for
6 'DHS,' the television series.

7 "That 'DHS,' the television series had the
8 endorsement of President Bush, when, in truth and in fact, as
9 Defendant Medawar well knew, the 'DHS,' the television series,
10 did not have the endorsement of President Bush.

11 "That Steeple had the endorsement of, and approval,
12 to use the name and seal of, the Department of Homeland
13 Security, when, in truth and in fact, as Defendant Medawar well
14 knew, Steeple did not have the a endorsement of, or the,
15 approval to use the name and seal of the Department of Homeland
16 Security.

17 "That Steeple had 26 episodes of 'DHS,' in its
18 various forms, in post-production, when, in truth and in fact,
19 as Defendant Medawar well knew, Steeple did not have 26
20 episodes of 'DHS' in any form in post-production.

21 "In addition to the foregoing false and fraudulent
22 representations" -- in paragraph seven -- "and promises,
23 Defendant Medawar knowingly concealed, and caused others
24 working at his direction to conceal, the following material
25 fact from investors or potential investors:

1 "The California Department of Corporations had issued
2 a Desist and Refrain Order to Defendant Medawar on or about
3 May 9, 2005, ordering that Defendant Medawar desist and refrain
4 from selling securities in the state of California.

5 "Paragraph eight, in furtherance of the scheme to
6 defraud, Defendant Medawar, also caused lulling letters to be
7 mailed and sent to investors that created the false and
8 misleading impression that their funds had been invested as
9 promised and that Steeple had used those investors funds for
10 business purposes as promised. Medawar caused these letters to
11 be mailed and sent to on investors to prevent them from seeking
12 the return of their investments, suing Defendant Medawar
13 Steeple, and from informing law enforcement officers of their
14 activities.

15 "Beginning at least as early as May 2003 and
16 continuing through on or about September 2005, in Los Angeles
17 County, within the Central District of California, and
18 elsewhere, defendant, Alison Ann Heruth, also known as Alison
19 Heruth-Waterbury, having full knowledge of the actual
20 commission of a felony cognizable by a court of the United
21 States, to wit, violations of the mail fraud statute, 18 United
22 States Code, Section 1341, by Joseph M. Medawar, arising from
23 Medawar's scheme to defraud and to obtain money and property
24 from investors by means of materially false and fraudulent
25 pretenses, representations and promises, and the concealment of

1 material facts, did conceal the same by making material false
2 statements during an interview conducted on or about April 13,
3 2005, by the United States Attorney's Office, the Federal
4 Bureau of Investigation, and the Internal Revenue Service, and
5 did not as soon as possible make known the same to some judge
6 or other person in civil or military authority under the United
7 States.

8 Are you pleading guilty to that charge because you
9 are in fact guilty?

10 THE DEFENDANT: On everything that you just said, am
11 I guilty of?

12 THE COURT: The charge in count 32.

13 THE DEFENDANT: That I had full --

14 THE COURT: The grand jury repeats and realleges
15 paragraphs one through three and five through eight of this
16 indictment to set up that count. The count has to do with the
17 failure to notify anybody and to -- the United States
18 Attorney's Office, the FBI and the Internal Revenue Service or
19 some judge that you had knowledge that Joseph M. Medawar was
20 violating the laws of the United States, that is, a violation
21 of a mail fraud statute, which is Title 18, United States Code,
22 Section 1341. That is the charge against you.

23 Are you pleading guilty to that charge because you
24 are, in fact, guilty?

25 THE DEFENDANT: Yes.

1 THE COURT: And on April 13, 2005, were you
2 interviewed in the United States Attorney's Office with the
3 United States -- assistant United States attorney, FBI and
4 Internal Revenue Service present?

5 THE DEFENDANT: Sorry. I didn't hear you.

6 THE COURT: Were you, on April 13, 2005, in the
7 United States Attorney's Office, with the Federal Bureau of
8 Investigation, and the Internal Revenue Service?

9 THE DEFENDANT: Yes.

10 THE COURT: And at that time, did you let them know
11 that Joseph Medawar was involved in the scheme to defraud in
12 violation of mail fraud statutes of the United States?

13 THE DEFENDANT: No.

14 MR. NISHI: For the record, Your Honor, the interview
15 took place at the offices of FBI at 11000 Wilshire in Westwood,
16 California.

17 THE COURT: Is that where they took place?

18 THE DEFENDANT: (Nodding head up and down.)

19 THE COURT: Did you know when you were not telling
20 those persons about your knowledge that you were in fact
21 violating the laws of the United States?

22 MR. NISHI: I'm sorry, Your Honor.

23 THE COURT: That's all right. Relax.

24 THE DEFENDANT: I know now, I guess.

25 THE COURT: Well, did you know you were violating the

1 law when you did that?

2 THE DEFENDANT: Yes.

3 THE COURT: That you knew something that you weren't
4 telling?

5 THE DEFENDANT: Yes.

6 THE COURT: Are you pleading guilty because of any
7 threat made upon you or any member of your family, or anyone
8 who is near and dear to you?

9 THE DEFENDANT: No.

10 THE COURT: Is your plea of guilty entirely free and
11 voluntarily?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you presently under a doctor's care?

14 THE DEFENDANT: No.

15 THE COURT: Are you taking any medicines or drugs
16 regularly?

17 THE DEFENDANT: No.

18 THE COURT: Have you taken any medicines, drugs,
19 pills or alcoholic beverages today?

20 THE DEFENDANT: No.

21 THE CLERK: Have you ever been under psychiatric
22 care --

23 THE DEFENDANT: No.

24 THE COURT: -- of any kind?

25 You understand if I should accept your plea of

1 guilty, that the only thing left in your case is the imposition
2 of sentence, which may include imprisonment in this matter?

3 THE DEFENDANT: Yes.

4 THE COURT: Has counsel advised the defendant of
5 certain legality or admissibility of any statements or
6 confessions or other evidence the government has against her?

7 MR. NISHI: Yes, I have.

8 THE COURT: Is the defendant pleading guilty because
9 of any illegally obtained evidence in the possession of the
10 government?

11 MR. NISHI: No, Your Honor.

12 THE COURT: Has the defendant told you anything about
13 medication, drugs or other factors that may affect her actions
14 today?

15 MR. NISHI: No, Your Honor.

16 THE COURT: Have you made any indication to your
17 client of what sentence I would impose or conveyed to the
18 defendant the promise of any particular sentence in the event
19 of a plea of guilty?

20 MR. NISHI: No, Your Honor.

21 THE COURT: Do you know of any reason why I should
22 not accept the plea of guilty from your client?

23 MR. NISHI: No, Your Honor.

24 THE COURT: After review of this matter and
25 consultation with your client, do you believe it's in your

1 client's best interest to plead guilty to count 33[sic] of the
2 indictment rather than to go to trial in this matter?

3 MR. NISHI: Yes.

4 THE COURT: Have you discussed with your client the
5 elements of the offense of Title 18, United States Code,
6 Section 4, to which she is pleading guilty in count 33 this
7 afternoon?

8 MR. NISHI: Yes, Your Honor.

9 THE CLERK: Are you satisfied that your client
10 understands the elements of the offense of Title 18, United
11 States Code, Section 4, to which she is pleading guilty this
12 afternoon?

13 MR. NISHI: Yes, Your Honor.

14 MR. WILLINGHAM: For the record, it's just count 32
15 instead of 33, which the court referenced.

16 THE COURT: It's the same statute, the same facts?

17 MR. NISHI: Yes, Your Honor.

18 THE COURT: Do you feel you've had sufficient time to
19 discuss the matter with Mr. Nishi before you plead guilty this
20 afternoon?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you satisfied with the representation
23 of Mr. Nishi in this matter?

24 THE DEFENDANT: Yes.

25 THE COURT: After talking to Mr. Nishi, and your own

1 knowledge of the facts of this case, do you feel it's in your
2 best interest to plead guilty to count 32 of this superseding
3 indictment rather than to go to trial in this matter?

4 THE DEFENDANT: Yes, I do think it's in my best
5 interest to accept this.

6 THE COURT: After talking to Mr. Nishi and -- do you
7 think it's in your best interest to plead guilty?

8 THE DEFENDANT: Yes.

9 THE COURT: Has Mr. Nishi, or has any other person,
10 told you that you must lie to me in the answers to the
11 questions which I put to you so that I would accept your plea
12 of guilty?

13 THE DEFENDANT: No.

14 THE COURT: Have you lied to me in any fashion in the
15 answers to the questions which I put to you this afternoon?

16 THE DEFENDANT: No.

17 THE COURT: How then do you now plead to count 32,
18 guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: Defendant and counsel having advised the
21 court that they have conferred upon the offered plea of guilty
22 and all aspects of the charges against the defendant and any
23 defenses she may have, the court having observed the defendant
24 in making her answers, her demeanor while answering questions,
25 her apparent intelligence and her attitude, observing that the

1 defendant does not appear to be under the influence of any
2 medicine, drug or other substance which may affect her judgment
3 or manner in this court, the court finds that the offer of the
4 plea of guilty of the defendant, Alison Ann Heruth, to count 32
5 of the indictment has a factual basis, is free any coercive
6 influence of any kind, is freely and voluntarily made with the
7 full knowledge of the charges against her in the answers to her
8 plea.

9 Having been promised no certain sentence, and no
10 threats or coercion having been exerted upon her in any manner,
11 the plea of guilty of the defendant, Alison Ann Heruth, to
12 count 32 of the indictment will be accepted and entered.

13 Is it -- Counsel, Mr. Nishi, is it clear that she's
14 pleading guilty to count 32, which is same factual basis as
15 count 33?

16 MR. NISHI: Yes, Your Honor.

17 THE COURT: Did you understand that, Ms. Heruth, you
18 were pleading guilty to count 32, which is basically the same
19 factual basis as count 33?

20 THE DEFENDANT: I'm sorry. Would you please repeat.

21 THE COURT: Do you understand that you are pleading
22 guilty to count 32, which as the same factual basis as count
23 33?

24 THE DEFENDANT: Yes.

25 THE CLERK: The court having observed the defendant

1 in making her answers, her demeanor while answering questions,
2 her apparent intelligence and her attitude, observing that the
3 defendant does not appear to be under the influence of any
4 medicine, drug or other substance which may affect her judgment
5 or manner in this court, the court finds that the offer of the
6 plea of guilty of the defendant, Alison Ann Heruth, to count 32
7 of the indictment, has a factual basis, is free any coercive
8 influence of any kind, is freely and voluntarily made with the
9 full knowledge of the charges against her in the answers to her
10 plea.

11 Having been promised no certain sentence, and no
12 threats or coercion having been exerted upon her in any manner,
13 the plea of guilty of the defendant, Alison Ann Heruth, to
14 count 32 of the indictment will be accepted and entered.

15 Is it -- Counsel, Mr. Nishi, is it clear that she's
16 pleading guilty to count 32, which is same factual basis as
17 count 33?

18 MR. NISHI: Yes, Your Honor.

19 THE COURT: Matter is referred to the probation
20 office for a presentence investigation and report, continued to
21 July 17, 2006, at 1:30 p.m.

22 Ms. Heruth, you are to return on July 17, at 1:30
23 p.m. for sentence.

24 You understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: All right. We're in recess.

2 (Proceedings concluded at 2:26 p.m.)

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C E R T I F I C A T E

I hereby certify that pursuant to Section 753,
Title 18, United States Code, the foregoing is a true and
correct transcript of the stenographically reported proceedings
held in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the Judicial
Conference of the United States.

Date: July 28, 2016

/s/ _____

Deborah K. Gackle
CSR No. 7106

{PLAINTIFF} v.
{DEFENDANT}{WITNESSNAME}
{DATE}

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